(b) for damages for breach of contract including a claim for future profits;

(c) for loss and expenses arising from the termination.

The total claim of the respondents is estimated in the region of $115 million.

Another consideration put forward for the respondents is that as the respondents are the main contractors, their claims in the arbitration proceedings are of great concern to the sub-contractors. Two big sub-contractors, Gammon and Brightside/Woh Hup, are in support of the respondents' claims against the applicants. If arbitration proceedings were to come to a grinding halt, these other innocent people will suffer.

Taking all these circumstances together, counsel for the respondents submits that the application for security for costs was oppressive to the respondents. He relies on *Sir Lindsay Parkinson & Co. Ltd.* v. *Triplan Ltd.*[1]

In that case, Triplan, a small company which had carried out sub-contract work for Parkinsons, the main contractor, a large public company, issued a writ for outstanding balances due to them. The proceedings were stayed and the dispute went to arbitration. Shortly before the hearing of the arbitration, Parkinsons, having found out that Triplan was in financial difficulties, applied to the High Court for security for costs of the arbitration under section 447 of the Companies Act 1948. It was submitted for Parkinsons that once it was shown that there was reason to believe that Triplan would be unable to pay the costs if Parkinsons were successful, the court had no discretion but had to order security. The Court of Appeal rejected the argument and held that section 447 of the Companies Act was not mandatory but gave the court a discretion which was to be exercised having regard to all the circumstances of the particular case. Lord Denning M.R. and Cairns L.J. gave some circumstances which a court could take into account whether or not to order security for costs against a company. In the case before them, they included the fact that (a) the application for security was made shortly before the date fixed for the hearing of the arbitration; (b) the probable inability of Triplan to meet an order for costs was likely to be dependent on the failure to recover the sums which were being claimed in that very arbitration; and (c) an order for security might well result in Triplan being unable to proceed at all with its *bona fide* claim.

At the conclusion of the hearing, I did say that *Parkinson's* case was most relevant to the issues in the present case. So far as the law is concerned, as section 388(1) of our Companies Act is the same as section 447 of the United Kingdom Companies Act, our High Court would exercise the same discretion as that obtained in the High Court in England. As for the facts and circumstances, however one looks at them, be it the parties, the claims, the issues and the amounts involved, in the present case, they are more in favour of the respondents than they were for Triplan in *Parkinsons'* case that the arbitration proceedings should proceed without security for costs. There is also the added fact here that there are innocent sub-contractors whose claims are wholly dependent on the arbitration proceedings.

Having regard to the foregoing, I dismissed the application with costs as I was of the view that an order for security for costs would be oppressive to the respondents.

Application dismissed.

Solicitors: *Kyin Surin & Co.; Shook Lin & Bok.*

NG ENG HUAT v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) December 1, 1987]

[Singapore – Magistrate's Appeal No. 388 of 1986]

Criminal Law – Collision with car – Whether negligent or deliberate act – False report made – Whether sufficient evidence present to prove charge – Penal Code (Cap. 103, 1970 Ed.), ss. 182, 336 & 352.

Criminal Procedure – Sentences – Whether manifestly excessive.

In this case, the accused was charged with two offences. The first charge was for negligently reversing his car and colliding into the front portion of another car. The second charge was for giving a false report about the accident to the police.

The accused was convicted on both charges. He was sentenced to four weeks' imprisonment on the first charge and two weeks' imprisonment on the second charge, the sentences to run concurrently.

The main point taken by counsel for the appellant on the first charge is that the trial court erred in law in convicting the appellant when the evidence of the prosecution witnesses showed that the appellant intentionally reversed his car to collide into the other car. It was argued that the act of the appellant of reversing his car was not a negligent act under section 336 of the Penal Code. The act was an intentional and deliberate act.

As regards the second charge, it was submitted that the learned magistrate erred in law and in fact in convicting the appellant under section 182 of the Penal Code when the appellant had raised a doubt in the prosecution case.

The accused also appealed against the respective sentences.

Held: (1) on the evidence, it was clear that the act of the appellant of reversing his car was not a negligent act but an intentional and deliberate act. Such act of the appellant was not a negligent act within the meaning of section 336 of the Penal Code;

(2) however, the evidence accepted by the trial court showed clearly that the appellant had committed the offence of using criminal force on PW6 (the driver of the other car), an offence under section 352 of the Penal Code;

(3) an appellate court has power to alter the finding of a lower court in an appeal against conviction. There are two requirements for the exercise of this power. First, the facts must be such that the substituted charge was available from the start and could have been framed and tried concurrently. Secondly, the evidence must have been presented in such a way as to raise all the same issues of fact as would have been raised had the substituted charge been framed and trial claimed on it. Not only must the evidence for the prosecution be the same but the court must be satisfied that the evidence for the defence would also have been the same;

(4) the conviction was substituted with one under section 352 of the Penal Code and the sentence to remain the same. The sentence of four weeks' imprisonment was not manifestly excessive;

(5) it was clear that the appellant had made a false report. The sentence of two weeks' imprisonment in the circumstances of the case was not manifestly excessive.

Cases referred to:

(1) *Kala Bhika Baria* v. *The State* A.I.R. 1966 Bom. 13; (1966) Cr. L.J. 7.

(2) *Lew Cheok Hin* v. *R.* [1956] M.L.J. 131.

MAGISTRATE'S APPEAL.

Yap Gim Chuan for the appellant.

Ismail Hamid (Deputy Public Prosecutor) for the Public Prosecutor.

Cur. Adv. Vult.

Chua J.: This is an appeal by Ng Eng Huat against his conviction and sentence on the following two charges:

"*1st Charge*

YOU NG ENG HUAT
NRIC NO: 0173065-G

are charged that you, on or about the 8th day September 1985, at about 11 p.m., at the intersection of Marymount Road and Ang Mo Kio Avenue 1, Singapore, did a negligent act which endangered the personal safety of others, to wit, by reversing motor car EY 6543 U colliding into the front portion of motor car EQ 7499 A, and causing the said vehicle to hurl backward and colliding into the front portion of stationary motor lorry YN 2683, and you have thereby committed an offence punishable under section 336 of the Penal Code (Chapter 103).

2nd Charge

YOU NG ENG HUAT
NRIC NO: 0173065-G

are charged that you, on or about the 9th day of September 1985, at about 7 p.m., at Ang Mo Kio Police Post, Singapore, did give information to Corporal 2487 Chong Kwek Fah of the Singapore Police Force, contained in Traffic Accident Report No. 70149:

> 'On 8.9.85 at about 2300 hrs I was driving my car EY 6543 U along Marymount Road towards Ang Mo Kio Avenue 1 and heading towards Thomson Road when I came to the filter lane of Marymount Road and Ang Mo Kio Avenue 1, I stop my vehicle and to give way to the vehicle came from my right hand side. Whilst I stop my vehicle suddenly one motor car EQ 7499 A came and hit against my vehicle. As a result my vehicle rear portion was slightly dented. No one was injured.'

which information you knew to be false, knowing it to be likely that you would thereby cause such public servant to carry out an investigation into a case of careless driving committed by one Goh Seng Guan on 8th September 1985, at about 11 p.m. at the intersection of Marymount Road and Ang Mo Kio Avenue 1, Singapore, which the said public servant would not have done if the true state of facts were known to him, and you have thereby committed an offence punishable under section 182 of the Penal Code (Chapter 103)."

The appellant was sentenced to four weeks' imprisonment on the first charge and two weeks' imprisonment on the second charge, the sentences to run concurrently.

The facts are these.

On May 8, 1985, at about 11 p.m. Oliver Goh Seng Guan (PW6) and his girl friend Mevilla Chay Chye Peng (PW7) were travelling along Marymount Road in the direction of Ang Mo Kio Avenue 1 in a motor car EQ 7499A driven by PW6. Suddenly, a motor car EY 6543U driven by the appellant shot out of Bright Hill Drive into Marymount Road without looking out for PW6's oncoming car which caused PW6 to sound his horn. The two cars then

proceeded towards Ang Mo Kio Avenue 1, with the appellant's car preceding PW6's car.

At the slip road leading into Ang Mo Kio Avenue 1, PW6 found his way blocked by the appellant's car. Five men alighted from the appellant's car. The appellant, with Lee Cheng Chuan (DW2), approached PW6's car. They were aggressive, arrogant and fierce and PW6 was assaulted by DW2 through the car window.

After the assault, all the men returned to appellant's car and PW6 thought that the matter was over. The appellant drove his car forward for about two car lengths. All of a sudden, the appellant reversed his car very quickly which caused PW6 to engage his reverse gear and reverse his car but his car was hit by the appellant's car. The impact caused PW6's car to hurl backwards, colliding into the front portion of the lorry behind him. This provoked the lorry driver Lim Beng Teong (PW4) and his passenger Ong Chay Thiam (PW5), who had both witnessed the incident, to have an exchange of words with the appellant and his passengers. At this juncture, PW6 made good his escape from the scene by driving through a gap which was created when the appellant reversed his car. PW6 and PW7 then proceeded straight to the Paya Lebar police station where a report was lodged.

The appellant made a police report (ex P.4) on September 9, 1985 at about 7 p.m. at the Ang Mo Kio Police Post to Cp. Chong Kwek Fah (PW1). His report was that he stopped his car at the slip road of Marymount Road leading into Ang Mo Kio Avenue 1 to give way to the vehicle coming from his right, when suddenly car EQ 7499A came and hit his car from the rear.

According to PW1, the appellant's report gave him the impression that the driver of car EQ 7499A was at fault. He accordingly took action along the line of traffic investigation and sent the report, ex P.4, to the Traffic Police for further investigations, which were carried out by W/Cpl. Soomy Koh (PW2) and W/Sgt. Foo Kok Poo (PW3) of the Traffic Police. In view of what was stated in the report ex P.4, these two officers investigated along the premise that PW6 might have been guilty of careless driving. However, investigations showed otherwise.

The main point taken by counsel for the appellant on the first charge is that the trial court erred in law in convicting the appellant when the evidence of the prosecution witnesses (PW4, PW5, PW6 and PW7) showed that the appellant intentionally reversed his car to collide into PW6's car. It is argued that the act of the appellant of reversing his car to collide with PW6's car was not a negligent act under section 336 of the Penal Code. The act was an intentional and deliberate act.

I agree with the submission of counsel for the appellant. On the evidence, it is clear that the act of the appellant of reversing his car was not a negligent act but an intentional and deliberate act of the appellant to collide into PW6's car. Such act of the appellant was not a negligent act within the meaning of section 336 of the Penal Code (see *Kala Bhika Baria* v. *The State*[1]).

However, the evidence accepted by the trial court clearly shows that the appellant had committed the offence of using criminal force on PW6, an offence under section 352 of the Penal Code.

Criminal force is defined in section 350 of the Penal Code as follows:

> "Whoever intentionally uses force to any person, without that person's consent, in order to cause the committing of any offence, or intending by the use of such force illegally to cause, or knowing it to be likely that by the use of such force he will illegally cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other."

Section 352 provides the punishment for use of criminal force where there are no aggravating circumstances as follows:

> "Whoever assaults or uses criminal force to any person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment for a term which may extend to 3 months, or with fine which may extend to $500, or with both."

An appellate court, in an appeal against conviction, may alter the finding of the lower court: section 256(b)(ii) of the CPC.

The question I have to consider is whether in this case I should substitute the conviction for an offence under section 336 with an offence under section 352 of the Penal Code.

There are two main tests required in the exercise of the appellate court's power to alter a finding. First, the facts must be such that the substituted charge was available from the start and could have been framed and tried concurrently under sec-

tion 172 of the CPC; secondly, the evidence must have been presented in such a way as to raise all the same issues of fact as would have been raised had the substituted charge been framed and trial claimed on it. Not only must the evidence for the prosecution be the same but the court must be satisfied that the evidence for the defence would also have been the same: per Taylor J. in *Lew Cheok Hin* v. *R.*[2]

In the present case, the offence which the appellant was convicted was that he did a negligent act which endangered the personal safety of others. But the evidence adduced by the prosecution showed that the appellant did the act deliberately and not negligently. The defence was essentially a complete denial of the fact that he did reverse his motor car EY 6543U into PW6's motor car. As such, no defence of grave and sudden provocation could have been raised. The appellant could have been convicted by the trial court for the offence under section 352 of the Penal Code of using criminal force: section 173 CPC.

I substitute the conviction to one under section 352 of the Penal Code and maintain the sentence of four weeks' imprisonment.

The sentence of four weeks' imprisonment in the circumstances of this case is not manifestly excessive. The conduct of the appellant smacked of hooliganism. Such outrageous conduct on the part of motorists should be curbed and merits a deterrent sentence of imprisonment.

As regards the second charge, it is submitted that the learned magistrate erred in law and in fact in convicting the appellant under section 182 of the Penal Code when the appellant had raised a doubt in the prosecution's case.

Counsel for the appellant's argument is that in his report ex P.4, the appellant had made a traffic accident report that his car was collided onto the rear by PW6's car and that this report is supported by PW4, the lorry driver, who stated in his police report ex P.6 that he stopped at the slip road of Marymount Road and Ang Mo Kio Avenue 1 because there was an accident between vehicle EY 6543U and another vehicle and who, in answer to the question of counsel for the appellant, had said that it did occur to him that an accident had occurred earlier because he saw them having a dispute and that it was a minor accident.

It is submitted that the learned magistrate had failed to take the evidence of PW4 into consideration when he convicted the appellant of the offence under section 182. It is argued that the appellant reported only about the first collision and it is submitted that the prosecution had failed to prove that the information in the appellant's report was false and has also failed to prove positively that the appellant knew the police report ex P.4 to be false. It is argued that section 182 makes punishable the positive act of giving false information, it does not make the act of withholding of information an offence. It is submitted that the appellant could not be convicted of an offence under section 182 for failing to report that he had reversed his car to collide onto PW6's car.

Counsel for the appellant has put up an ingenious argument but on the facts of the case, it is without substance. The learned magistrate had accepted the evidence of PW6 and clearly there was no "first collision" as alleged by the appellant. The lorry driver did not see what happened earlier. He came upon a scene where two vehicles had stopped and the drivers were having a dispute, naturally he presumed that there had been an accident.

On the evidence, it is clear that the appellant had made a false report alleging that it was PW6's car that collided onto the rear of his car, when in truth it was he who reversed his car and deliberately collided onto PW6's car.

The sentence of two weeks' imprisonment, in the circumstances of this case, is not manifestly excessive. In fact, the learned magistrate had been lenient. The learned magistrate could have made the sentences to run consecutively. The offence is serious, the report misled the police and it was made maliciously to put the blame on PW6.

The sentence is to run concurrently with the sentence of four weeks' imprisonment for the offence under section 352 of the Penal Code.

Order accordingly.

Solicitors: *Ching & Co.*